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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/266,155	03/10/1999	BURTON J. PRICE	MRA-PT001	5381

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	PAPER NUMBER

1771

DATE MAILED: 01/29/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

A-3-15

# Office Action Summary

Application No.

09/266,155

Applicant(s)

PRICE ET AL.

Examiner

Cheryl Juska

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 10, 2002, has been entered.

### ***Response to Amendment***

2. Amendment B, submitted as Paper No. 14 on January 10, 2002, has been entered. Claim 7 has been amended as requested. The pending claims are 7-15.

3. Applicant's arguments regard the prior art rejections based upon the Tillotson patent (US 4,661,380) have been found persuasive. Applicant traverses on the grounds that the Examiner has inappropriately presumed breathability in the Tillotson carpet. Specifically, Applicant states the Examiner's presumption that the carpet 12 and secondary backing 52 are permeable is in error. Said arguments are convincing and the 102 rejection of claims 9, 13, and 14 as being anticipated by Tillotson and the 102/103 rejections of 7, 8, 10-12, and 15 as being anticipated by or obvious over Tillotson are hereby withdrawn.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 9, 13, and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,112,161 issued to Sorrells for the reasons of record.

***Claim Rejections - 35 USC § 102/103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 7, 8, 10-12, and 15 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited Sorrells patent.

Although Sorrells does not teach a specific permeability, it is reasonable to presume the claimed permeability is inherent to the invention of Sorrells. Support for presumption is found in the use of like materials (i.e., tufted primary backings, discontinuous polymeric adhesive layers, and a secondary backing) and in like objectives (i.e., to provide a breathable carpet). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the presently claimed permeability would obviously have been present when the carpet of Sorrells is provided. Note *In re Best*, 195 USPQ at 433, as to the providing of this 103 rejection with the above 102 rejection. Therefore, claims 7, 8, 10-12, and 15 are rejected as being anticipated or obvious over the cited prior art.

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***Response to Arguments***

8. Applicant traverses the above anticipation rejections by arguing that Sorrells does not teach the polymeric adhesive layer being “disposed in” the tufts (Amendment B, paragraph spanning pages 2-3). Said argument is unpersuasive in that, despite the lack of an explicit teaching in the references, it is asserted the “disposed in” limitation is inherent to said reference. Specifically, Sorrells teaches the application of pressure when adhesively laminating the secondary backing to the tufted primary backing (Sorrells, col. 6, lines 12-33). Thus, it is reasonable to presume that the fluid adhesive at least partially penetrates into the primary backing and the tufts. The burden is upon Applicant to prove otherwise. In fact, it is typical in the art to choose process conditions (i.e., viscosity of adhesive, temperature, pressure) such that the adhesive backing penetrates into the tufts and primary backing in order to increase tuftbind strength.

9. Applicant also traverses said anticipation rejection by asserting that the prior art does not teach a vehicle carpet product (Amendment B, page 3, lines 11-16). In response, the recitation “a laminated vehicle sound insulating carpet panel” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Therefore, the anticipation rejection of claims 9, 13, and 14 by the cited Sorrells patent is hereby maintained.

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10. With respect to the 102/103 rejection, Applicant argues that since Sorrells does not teach the “disposed in” limitation as traversed above, claims 7, 8, 10-12, and 15 are patentably distinct from the Sorrells reference (Amendment B, paragraph spanning pages 3-4). However, as previously discussed, this argument is unpersuasive. Thus, the 102/103 rejection over Sorrells is hereby maintained.

11. Applicant also argues the Sorrell rejection by asserting that “the permeability of the Sorrells’ fabric 10 would likely not be similar to that of the claimed invention because it is rendered permeable by a different process and for different purpose than the present invention” (Amendment B, paragraph spanning pages 4-5). This argument is found unpersuasive for several reasons. First, whether or not the process of Sorrells is different from Applicant’s is irrelevant since Applicant is claiming a product not a process. Secondly, the structural and chemical limitations of the presently claimed product are met by the teachings of Sorrells. Thus, one can only conclude that the claimed permeability property is also met. Thirdly, Applicant has not provided any evidence to the contrary. Specifically, Applicant has not shown that the Sorrells invention cannot have the claimed permeability and/or that the claimed permeability is unsuitable for the intended function of Sorrells (e.g., water evaporation). Hence, the Examiner contends that proper technical reasoning has been provided to support the 102/103 position, which is hereby maintained.

### ***Conclusion***


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.



CHERYLA JURIN  
PRIMARY EXAMINER

cj

January 28, 2002